

PETER C. WOLFF, JR. #2332  
Federal Public Defender  
District of Hawaii

ALEXANDER SILVERT  
First Assistant Federal Defender  
300 Ala Moana Boulevard, Suite 7104  
Honolulu, Hawaii 96850-5269  
Telephone: (808) 541-2521  
Facsimile: (808) 541-3545  
E-Mail: fpdhi@hotmail.com

Attorney for Defendant  
SAMUEL M. KAAUWAI, III

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

AUG 17 2005

at 11 o'clock and 14 min. a M  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

|                           |   |                            |
|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, | ) | CR. NO. 03-00248 DAE       |
|                           | ) |                            |
| Plaintiff,                | ) | NOTICE OF MOTION; MOTION   |
|                           | ) | TO WITHDRAW AS COUNSEL     |
| vs.                       | ) | DUE TO CONFLICT OF         |
|                           | ) | INTEREST; DECLARATION OF   |
| SAMUEL M. KAAUWAI, III,   | ) | COUNSEL; CERTIFICATE OF    |
|                           | ) | SERVICE                    |
| Defendant.                | ) |                            |
|                           | ) | DATE: August 22, 2005      |
|                           | ) | TIME: 10:30 a.m.           |
|                           | ) | JUDGE: Leslie E. Kobayashi |

EXHIBIT 6

EXHIBIT "E"

**NOTICE OF MOTION**

TO: EDWARD H. KUBO, JR.  
United States Attorney

MARSHALL H. SILVERBERG  
Assistant United States Attorney  
PJKK Federal Building  
300 Ala Moana Boulevard, Room 6100  
Honolulu, Hawaii 96813

PLEASE TAKE NOTICE that the following motion will be heard  
before the Honorable Leslie E. Kobayashi, in his courtroom in the United States  
Courthouse, 300 Ala Moana Boulevard, Honolulu, Hawaii, on Monday,  
August 22, 2005, at 10:30 a.m., or as soon as counsel may be heard.

PETER C. WOLFF, JR. #2332  
Federal Public Defender  
District of Hawaii

ALEXANDER SILVERT  
First Assistant Federal Defender  
300 Ala Moana Boulevard, Suite 7104  
Honolulu, Hawaii 96850-5269  
Telephone: (808) 541-2521  
Facsimile: (808) 541-3545  
E-Mail: fpdhi@hotmail.com

Attorney for Defendant  
SAMUEL M. KAAUWAI, III

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

|                           |   |                            |
|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, | ) | CR. NO. 03-00248 DAE       |
|                           | ) |                            |
| Plaintiff,                | ) | MOTION TO WITHDRAW AS      |
|                           | ) | COUNSEL DUE TO CONFLICT OF |
| vs.                       | ) | INTEREST                   |
|                           | ) |                            |
| SAMUEL M. KAAUWAI, III,   | ) |                            |
|                           | ) |                            |
| Defendant.                | ) |                            |
| _____                     | ) |                            |

**MOTION TO WITHDRAW AS COUNSEL  
DUE TO CONFLICT OF INTEREST**

COMES NOW the defendant, SAMUEL M. KAAUWAI, III, through  
counsel, Alexander Silvert, First Assistant Federal Defender, and moves this

Honorable Court to have the Office of the Federal Defender removed as counsel and new counsel appointed from the CJA panel.

This motion is based upon the sixth amendment and the attached declaration of counsel.

DATED: Honolulu, Hawaii, August 17, 2005.

A handwritten signature in black ink, appearing to read 'Alex Silvert', written over a horizontal line.

ALEXANDER SILVERT  
Attorney for Defendant  
SAMUEL M. KAAUWAI, III

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

|                           |   |                        |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, | ) | CR. NO. 03-00248 DAE   |
|                           | ) |                        |
| Plaintiff,                | ) | DECLARATION OF COUNSEL |
|                           | ) |                        |
| vs.                       | ) |                        |
|                           | ) |                        |
| SAMUEL M. KAAUWAI, III,   | ) |                        |
|                           | ) |                        |
| Defendant.                | ) |                        |
| _____                     | ) |                        |

**DECLARATION OF COUNSEL**

I, ALEXANDER SILVERT, hereby declare as follows:

1. I am counsel for defendant, SAMUEL M. KAAUWAI, III, having been appointed pursuant to the Criminal Justice Act on August 12, 2005.
2. It has become apparent that a conflict of interest exists in that the defendant may raise the ineffectiveness of the Federal Public Defender's Office in possible future litigation in this case prior to sentencing.
3. Up until the time the defendant pled guilty and for the majority of the time he has been awaiting sentencing, he was represented by William Domingo in his capacity as an Assistant Federal Defender. It is during this time period that the defendant believes he may have been rendered ineffective assistance of counsel.

4. Mr. Domingo kept the case as CJA counsel when he left the Federal Public Defender's Office, but recently withdrew from the case on August 12, 2005. At that time, the Federal Public Defender's Office was reappointed. However, given the defendant's reason for having removed Mr. Domingo as his counsel, as explained above, it would be inappropriate for the Federal Public Defender's Office to continue to represent the defendant as we would, in effect, have to discuss and possibly raise with the Court our own ineffectiveness. Wherefore, we respectfully ask that the Court appoint an attorney from the CJA panel.

5. The facts and statements set forth in the foregoing document are true and correct to the best of my knowledge and belief.

I DECLARE UNDER PENALTY OF PERJURY THAT THE  
FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY  
KNOWLEDGE AND BELIEF.

DATED: Honolulu, Hawaii, August 17, 2005.



ALEXANDER SILVERT  
Attorney for Defendant  
SAMUEL M. KAAUWAI, III

**CERTIFICATE OF SERVICE**

I, LYNELLE K. OSHITA, hereby certify that a true and exact copy of the foregoing document was duly mailed and/or hand-delivered to the following on August 17, 2005:

MARSHALL H. SILVERBERG  
Assistant United States Attorney  
PJKK Federal Building  
300 Ala Moana Boulevard, Room 6100  
Honolulu, Hawaii 96813

Attorney for Plaintiff  
UNITED STATES OF AMERICA

DATED: Honolulu, Hawaii, August 17, 2005.



LYNELLE K. OSHITA  
Legal Secretary to  
ALEXANDER SILVERT  
Attorney for Defendant  
SAMUEL M. KAAUWAI, III